IN THE

# Supreme Court of the United States

OCTOBER TERM, 1961.

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THE GLIDDEN COMPANY, DURKEE FAMOUS FOODS DIVISION, a foreign corporation,
*Petitioner,*

*vs.*

OLGA ZDANOK, JOHN ZACHARCZYK, MARY A. HACKETT, QUITMAN WILLIAMS, and MARCELLE KREISCHER,
*Respondents.*

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.*

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## MOTION OF AMERICAN SPICE TRADE ASSOCIATION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

## and

## BRIEF OF *AMICUS CURIAE*

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TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The American Spice Trade Association respectfully moves this court for leave to file the accompanying brief in this case as *amicus curiae.* The consent of the attorney for the petitioners herein to the filing of this brief has been obtained and filed with the Clerk of the Court. The consent

of the attorney for the respondent was requested but was refused.

The interest of the American Spice Trade Association and its reasons for asking for leave to file a brief *amicus curiae* are set forth below.

Movant is an industry trade association composed of persons, firms and corporations engaged in, or servicing, the spice and non-spice seasoning trade. The membership includes organizations which by volume engage in eighty to ninety per cent of the grinding, processing, and importation of spices and seasoning in the United States.

Movant believes that the issues herein involved are of far reaching concern to business organizations with outstanding and unexpired collective bargaining agreements covering one among a number of plants as well as to organizations having but a single plant and bargaining agreement. It is with the desire of presenting the interest and concern of such organizations and of indicating the potential consequence of the decision of the court below to those organizations that the American Spice Trade Association seeks permission for leave to file the accompanying brief.

The decision of the court below is directly opposed to the interests of this Association as a trade association representing industry members and business organizations having or making collective bargaining agreements in various locations throughout the United States. Collective bargaining agreements presently in effect throughout industry have terms and conditions which sufficiently resemble those under consideration here that the decision rendered in this matter is likely to control disposition of comparable or companion issues arising under many other union contracts.

The determination made in this case which is of concern to the movant is the decision of the court below that the

instant collective bargaining agreement granted seniority rights to employees which they were entitled to exercise at a plant of their employer other than the one in which they were actually employed and to which the agreement was expressly made applicable. We submit that such a determination was erroneous for reasons set forth in the accompanying brief. The parties to this controversy, and their counsel, are particularly concerned with the application of the rules of transferable seniority rights in this specific case in which one plant was entirely abandoned and, simultaneously, a new unstaffed plant was placed in operation. However, the impact of the decision of the court below extends to other contingencies than such a case and it is with a desire to indicate the potential and unwarranted effect in such other instances that this motion is made.

Movant believes that the decision of the court below which imposes upon an employer an obligation to grant preferential employment rights at one plant to employees laid off at another would be disruptive of normal employee relations and would inevitably cause conflicts with collective bargaining agreements which might be in effect at the former plant.

Movant further believes that the decision of the court below threatens an employer's right to manage the affairs of the company by restricting the company from relocating its facilities, in case of competitive or economic necessity, except under restriction which would, in many cases, be tantamount to a prohibition upon moving. If such limitations upon the power of an employer were specifically or expressly assumed by the employer in the collective bargaining agreement the danger indicated might not be present but in this case the limitation was not specifically set forth in the collective bargaining agreement.

Movant believes it to be of the greatest importance to settle and clarify the rights and duties as to seniority of the union, the employer and the employee involved in or committed to all collective bargaining agreements which are specifically confined by their terms to a single plant and location.

Dated: July 26, 1961.

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Of Counsel:
THOMAS W. KELLY.

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## BRIEF OF AMERICAN SPICE TRADE ASSOCIATION AS *AMICUS CURIAE.*

### Statement.

Movant is of the opinion that upon expiration of the terms of this collective bargaining agreement, as well as upon the final termination by discharge of the employment of these respondents, there came to an end, all contractual obligations except those as to which a breach had already occurred and all contractual rights the vesting or accruing of which required any subsequent act. The arguments substantiating that view are sufficiently presented by petitioner's counsel to require no supplemental submission by the movant.

Accordingly, movant desires to stress its additional contention that, quite apart and aside from that argument,

the *plant* collective bargaining agreement in issue here, or others comparable or similar to it, of which there are many, ought not be construed to impose obligations which extend throughout the *company* or attach to any plant other than the one at which the agreement is in operation unless *specific* provision to that effect is embodied in the agreement.

## ARGUMENT IN SUPPORT OF REASONS

### I.

**The instant collective bargaining agreement was, in all of its phases, including seniority rights, confined and restricted in its scope and application to the single plant at Elmhurst, New York.**

It is respectfully submitted that the scope and obligation of the instant collective bargaining agreement in its totality is confined and limited by its terms and its nature to that part, division, or component of the affairs and activities of the employer as it conducted in the State of New York. This collective bargaining agreement could not in all of its terms, or any of them, be transplanted to and be imposed upon a plant in Pennsylvania. We turn to some of the specific provisions of the collective bargaining agreement which conclusively establish the validity of this conclusion: (a) the grievance procedure for the settlement of disputes was to be referred to the New York State Mediation Board (Art. XX 2(e), Ex. A to Answer; R. 73a); (b) the Disability Benefit Plan was a New York State approved and assessed program (id., Art. XIV, 5-6; R. 71a); (c) the terms for checkoff of union dues and the welfare plan were for the benefit only of the one New York local union (id., Art. III and XIV; R. 58a and 70a); (d) the

seniority list itself includes only employees at the one plant (id., Art. XI, 2; R. 67a).

Movant does not suggest that if the New York plant had merely been transposed substantially intact within an adjacent vicinity, or a block away, that the contract would have thereupon or thereby become inoperative. That however is not the circumstance existing in this case. The change effected here was such as to render nugatory basic and essential clauses and activities of the collective bargaining agreement. The original plant was not moved but was lawfully abandoned. The new plant, considered in the context of union and labor relations, was in no sense a reproduction or continuity of the old but was located in another state, was outside the jurisdiction of the original union, and was removed in every practical consideration from mass continuity of employment by the prior employees.

No party to this proceeding could reasonably say, and indeed none do, that this collective bargaining agreement, as such, could be operative at the new plant, even if its terms had not expired. (Appendix A to Petition for Writ, p. A-13 footnote 26).

What is said in effect is that such parts of the union contract as grant the employee benefits and seniority privileges ought be imposed on the Pennsylvania plant though the entire balance of the agreement admittedly has no such status or terms as would allow it to be effective at this new location. In other words the failure to honor or perform the collective bargaining agreement terms as to seniority at the Pennsylvania plant constituted a breach of that agreement.

We respectfully submit that where the total collective bargaining agreement, considered as a whole, is so wholly inapplicable to and so clearly impossible of execution at the

new plant it does great violence to the orderly declaration of labor relations to isolate from its context one phase of that same agreement and find that it has a scope and application which is the exact converse of that given to the agreement from which it derived. It follows, we submit, that seniority rights could not be claimed by the employees at the plant in Bethlehem, Pennsylvania or, to put it another way, the refusal to grant seniority rights at the Pennsylvania plant was not a breach of the collective bargaining agreement.

## II.

**Seniority rights created and fixed at one plant ought not be transferred to or imposed upon another plant in the absence of specific and express provision expressing the conditions under which the transposition is to be effected since otherwise an orderly and exact determination of important rights is not possible.**

The collective bargaining agreement here involved contains express provision with respect to the rights and obligations of employer and employee in those instances in which there occurs either a "curtailment of production" or a "continuous layoff". The language of the agreement as it pertains to each such instance is as follows:

> 1. *In the case of a continuous layoff:* "Employees whose seniority is terminated due to continuous layoff shall receive first preference for employment before new employees are hired." (Art. XI 6(c), Ex. A to Answer; R. 69a)
>
> 2. *In the case of a curtailment of production:* "Employees shall be recalled to work in the reverse order of their layoff" (Art. XI 4(e) id.; R. 68a)

In the particular circumstances here involved the event said to bring the quoted rights into operation was the permanent shutdown of the plant at which the agreement was in operation.[1] However the circumstances or contingencies under which a right to preferential reemployment arises under such clauses is not confined to such a case. There may be numerous instances of temporary layoff due to work load variations. Would these employees, even assuming the union contract had not expired, have the right in such cases to seek work at another plant, new or old, then operated by the employer where new applicants are being hired to perform the same functions? *If this old plant had been abandoned and its activities been relocated after the new plant was in operation* would it be said that these employee petitioners could in that case "follow their work" to the Pennsylvania plant and interpose their seniority ratings on the complex of seniority ratings that might then exist there? If an employer with three separate plants had contract clauses similar to those involved here, and employees in two such plants were laid off and claimed employment priority over new applicants at the third plant one can readily visualize the impossibility of marshalling seniority rights among the resulting mixture of seniority contracts which derived from separate plants, at different locations, under different contracts, and with disparate and perhaps conflicting unions. Indeed we submit that the prospect of contemplating such negotiable seniority rights is possible only in such a case as this where it happens that the situation is a simple one in which the old plant is entirely abandoned and a new one, not yet staffed with employees or subject to seniority ratings, is simultaneously opened by

[1] We leave aside our belief that such a situation is not a "lay off" within the meaning of the agreement but is a permanent discharge.

the employer. If in this case the "new plant" had been one of a long standing operation with seasoned collective bargaining agreements in place it is difficult to suppose that the court below would have imposed the instant seniority rights upon those already in existence even if the production in question, had been relocated to the new plant.

We respectfully submit that a one plant collective bargaining agreement cannot be made operative in any of its terms to another separate and autonomous plant of the employer unless specific and express written terms are embodied in the union contract which are directed toward setting forth the extent and the manner in which such a transposition of rights shall be effected. A failure to recognize the essential importance of such a requirement can lead to the most complex, involved, and unforeseen consequences. It is not difficult to visualize the problems inherent in making any seniority rights which are operative at one plant effective at another but to accomplish or compel that transposition without specific contract terms indicating at least in a general way the rules and standards which will govern such transposition would, we believe, result in the utmost confusion and uncertainty as to the particular rights and duties of the employer, the employee, and the union involved.

The consequences of the ruling of the court below are of material and substantial concern and importance to an orderly development of basic rules concerned with the meaning and effect "of contracts between an employer and a labor organization" (29 USCA Sec. 185; 61 Stat. 156).

## Conclusion.

For the foregoing reasons the petition for writ of certiorari should be granted, the decision of the Circuit Court reversed and the judgment of the District Court reinstated.

Dated: July 26, 1961.

Respectfully submitted,

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